

SENATE BILL No. 265

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-30-6-6; IC 34-24-1-1; IC 35-45-9-1; IC 35-50-2-16.

Synopsis: Criminal gangs. Provides that real property used by a criminal gang in furtherance of the commission of a crime is a nuisance (and may be abated accordingly), and provides an exception if the property owner is unaware that the property is being used in furtherance of the commission of a crime. Allows the forfeiture of certain property used in furtherance of a criminal gang offense. Broadens the definition of "criminal gang" and allows certain misdemeanors committed by gang members to be sentenced as Class D felonies.

Effective: July 1, 2008.

Broden

January 10, 2008, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 265

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-30-6-6 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. (a) Whatever is:

- 3 (1) injurious to health;
4 (2) indecent;
5 (3) offensive to the senses; or
6 (4) an obstruction to the free use of property;

7 so as essentially to interfere with the comfortable enjoyment of life or
8 property, is a nuisance, and the subject of an action.

9 **(b) Except as provided in subsection (c), any real property that**
10 **is owned, leased, or used by a criminal gang in furtherance of the**
11 **commission of a crime is a nuisance and may be the subject of an**
12 **action.**

13 **(c) Subsection (b) does not apply to real property leased or used**
14 **by a criminal gang in furtherance of the commission of a crime if**
15 **the owner or person having legal possession of the real property**
16 **does not have actual knowledge that the real property is being used**
17 **in furtherance of the commission of a crime.**



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SECTION 2. IC 34-24-1-1, AS AMENDED BY P.L.137-2007,
SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2008]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are
intended for use by the person or persons in possession of them to
transport or in any manner to facilitate the transportation of the
following:

(A) A controlled substance for the purpose of committing,
attempting to commit, or conspiring to commit any of the
following:

(i) Dealing in or manufacturing cocaine or a narcotic drug
(IC 35-48-4-1).

(ii) Dealing in methamphetamine (IC 35-48-4-1.1).

(iii) Dealing in a schedule I, II, or III controlled substance
(IC 35-48-4-2).

(iv) Dealing in a schedule IV controlled substance
(IC 35-48-4-3).

(v) Dealing in a schedule V controlled substance
(IC 35-48-4-4).

(vi) Dealing in a counterfeit substance (IC 35-48-4-5).

(vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).

(viii) Possession of methamphetamine (IC 35-48-4-6.1).

(ix) Dealing in paraphernalia (IC 35-48-4-8.5).

(x) Dealing in marijuana, hash oil, or hashish
(IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property
(IC 35-43-4-3) if the retail or repurchase value of that property
is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-10-4.

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass
destruction (as defined in IC 35-41-1-29.4) used to commit,
used in an attempt to commit, or used in a conspiracy to
commit an offense under IC 35-47 as part of or in furtherance
of an act of terrorism (as defined by IC 35-41-1-26.5).

(2) All money, negotiable instruments, securities, weapons,
communications devices, or any property used to commit, used in
an attempt to commit, or used in a conspiracy to commit an
offense under IC 35-47 as part of or in furtherance of an act of
terrorism or commonly used as consideration for a violation of
IC 35-48-4 (other than items subject to forfeiture under
IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

(A) furnished or intended to be furnished by any person in

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- 1 exchange for an act that is in violation of a criminal statute;
 2 (B) used to facilitate any violation of a criminal statute; or
 3 (C) traceable as proceeds of the violation of a criminal statute.
 4 (3) Any portion of real or personal property purchased with
 5 money that is traceable as a proceed of a violation of a criminal
 6 statute.
 7 (4) A vehicle that is used by a person to:
 8 (A) commit, attempt to commit, or conspire to commit;
 9 (B) facilitate the commission of; or
 10 (C) escape from the commission of;
 11 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 12 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 13 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense
 14 under IC 35-47 as part of or in furtherance of an act of terrorism.
 15 (5) Real property owned by a person who uses it to commit any of
 16 the following as a Class A felony, a Class B felony, or a Class C
 17 felony:
 18 (A) Dealing in or manufacturing cocaine or a narcotic drug
 19 (IC 35-48-4-1).
 20 (B) Dealing in methamphetamine (IC 35-48-4-1.1).
 21 (C) Dealing in a schedule I, II, or III controlled substance
 22 (IC 35-48-4-2).
 23 (D) Dealing in a schedule IV controlled substance
 24 (IC 35-48-4-3).
 25 (E) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
 26 (6) Equipment and recordings used by a person to commit fraud
 27 under IC 35-43-5-4(10).
 28 (7) Recordings sold, rented, transported, or possessed by a person
 29 in violation of IC 24-4-10.
 30 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as
 31 defined by IC 35-45-6-1) that is the object of a corrupt business
 32 influence violation (IC 35-45-6-2).
 33 (9) Unlawful telecommunications devices (as defined in
 34 IC 35-45-13-6) and plans, instructions, or publications used to
 35 commit an offense under IC 35-45-13.
 36 (10) Any equipment used or intended for use in preparing,
 37 photographing, recording, videotaping, digitizing, printing,
 38 copying, or disseminating matter in violation of IC 35-42-4-4.
 39 (11) Destructive devices used, possessed, transported, or sold in
 40 violation of IC 35-47.5.
 41 (12) Tobacco products that are sold in violation of IC 24-3-5,
 42 tobacco products that a person attempts to sell in violation of

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IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

(13) Property used by a person to commit counterfeiting or forgery in violation of IC 35-43-5-2.

(14) After December 31, 2005, if a person is convicted of an offense specified in IC 25-26-14-26(b) or IC 35-43-10, the following real or personal property:

(A) Property used or intended to be used to commit, facilitate, or promote the commission of the offense.

(B) Property constituting, derived from, or traceable to the gross proceeds that the person obtained directly or indirectly as a result of the offense.

(15) Except as provided in subsection (e), a motor vehicle used by a person who operates the motor vehicle:

(A) while intoxicated, in violation of IC 9-30-5-1 through IC 9-30-5-5, if in the previous five (5) years the person has two

(2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction; or

(B) on a highway while the person's driver's license is suspended in violation of IC 9-24-19-2 through IC 9-24-19-4, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction.

If a court orders the seizure of a motor vehicle under this subdivision, the court shall transmit an order to the bureau of motor vehicles recommending that the bureau not permit a motor vehicle to be registered in the name of the person whose motor vehicle was seized until the person possesses a current driving license (as defined in IC 9-13-2-41).

(16) A motor vehicle or any other real or personal property used in furtherance of an offense described in IC 35-45-9.

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to

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seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a narcotic drug).

(2) IC 35-48-4-1.1 (dealing in methamphetamine).

(3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(5) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a Class A felony, Class B felony, or Class C felony.

(7) IC 35-48-4-6.1 (possession of methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(8) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

(e) A motor vehicle operated by a person who is not:

(1) an owner of the motor vehicle; or

(2) the spouse of the person who owns the motor vehicle;

is not subject to seizure under subsection (a)(15) unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a)(15).

SECTION 3. IC 35-45-9-1, AS AMENDED BY P.L.192-2007, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. As used in this chapter, "criminal gang" means **an ongoing organization, association, or a group with at least three (3) members that specifically:**

~~(1) either:~~

~~(A) promotes, sponsors, or assists in; or~~

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(B) participates in; or

(2) requires as a condition of membership or continued membership; has as one (1) of its primary activities the commission of a felony, or an act that would be a felony if committed by an adult, or the offense of battery (IC 35-42-2-1).

SECTION 4. IC 35-50-2-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 16. (a) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed a misdemeanor offense convicted of and sentenced for a Class D felony if the state can show beyond a reasonable doubt that the person knowingly or intentionally:**

(1) was a member of a criminal gang while committing the offense; and

(2) committed the offense at the direction of or in affiliation with a criminal gang.

(b) If the person is convicted of the offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(c) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person knowingly or intentionally was a member of a criminal gang while committing the offense and committed the offense at the direction of or in affiliation with a criminal gang as described in subsection (a), the court shall enter judgment of conviction of a Class D felony and sentence accordingly.

(d) For purposes of subsection (c), evidence that a person was a member of a criminal gang or committed a felony at the direction of or in affiliation with a criminal gang may include expert testimony under the Indiana Rules of Evidence that may be admitted to prove that particular conduct, status, and customs are indicative of criminal gang activity. The expert testimony may include the following:

(1) Characteristics of persons who are members of criminal gangs.

(2) Descriptions of rivalries between criminal gangs.

(3) Common practices and operations of criminal gangs.

(4) Behavior of criminal gangs.

(5) Terminology used by members of criminal gangs.

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1 **(6) Codes of conduct, including criminal conduct, of**
2 **particular criminal gangs.**

3 **(7) Types of crimes that are likely to be committed by a**
4 **particular criminal gang.**

5 **SECTION 5. [EFFECTIVE JULY 1, 2008] IC 35-45-9-1, as**
6 **amended by this act, and IC 35-50-2-16, as added by this act, apply**
7 **only to crimes committed after June 30, 2008.**

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